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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,240	03/25/2004	Robert J. Egan	5220-1	1768

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EXAMINER

COTTINGHAM, JOHN R

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/810,240

Applicant(s)

EGAN, ROBERT J.

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3 and 5-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry et al. U.S. Patent 5,701,998.

Regarding claim 1, a lockable protective cap 10 for a post B having a top end and an engageable surface, the cap comprising: a sidewall having a first end and an open second end (bottom), said sidewall forming a post receiving opening (lower hollow portion); a cover (top) at least partially closing said first end of said sidewall; a locking member 20 extending inwardly from said sidewall for engaging the engageable surface of the post.

Regarding claim 2, wherein said cover completely encloses said first end of said sidewall.

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Regarding claim 3, wherein said cover provides a protective lip (22) at said first end of said sidewall for covering at least a portion of the top end of the post.

Regarding claim 5, wherein said locking member 20 is formed by a portion of said sidewall extending inwardly into said post-receiving opening.

Regarding claim 6, wherein said locking member 20 comprises a rib.

Regarding claim 7, wherein said rib 20 extends substantially around the perimeter of said post-receiving opening of said sidewall.

Regarding claim 8, wherein said sidewall further comprises a channel (formed between 20 and 22) for mateably engaging a portion of the post.

Regarding claim 9, wherein said locking member 20 is formed unitarily with said sidewall. (it is a unitary piece once assembled)

Regarding claim 10, wherein said locking member 20 comprises a surface for sliding over the engageable surface of the post.

Regarding claim 11, wherein at least one of said locking member 20 and said sidewall are deformable to slide over the engageable surface of the post. (inherent from the figures)

Regarding claim 12, wherein said locking member comprises a tab 20.

Regarding claim 13, wherein said locking member 20 comprises a distal surface displaced from said sidewall for engaging the engageable surface of the post.

Regarding claim 14, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post.

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Regarding claim 15, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about two inches. (The size is not disclosed but it is inherent that it is about 2 inches) (A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

Regarding claim 16, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post plus about the length of the engageable surface of the post.

Regarding claim 17, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about 2.75 inches. (The size is not disclosed but it is inherent that it is about 2.75 inches) (A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

Regarding claim 18, a lockable protective cap 10 for a post having a top end 12 and an engageable surface, the cap comprising: a sidewall 114 having a first end and an open second end (bottom), said sidewall forming a post receiving opening; a cover 12 at least partially closing said first end of said sidewall; a locking member 20 extending inwardly from said sidewall for engaging the engageable surface of the post; and a means 22 for preventing said cap from rotating about the post.

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Regarding claim 19, wherein said means 22 for preventing said cap from rotating about the post comprises at least one of a channel (the channel formed between 20 and 22), a slot, an opening in said sidewall, and a deformable sidewall.

Regarding claim 20, wherein said means 22 for preventing said cap from rotating about the post comprises said sidewall being formed to match the shape of at least a portion of the post.

4. Claims 1-7, and 9-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Young U.S. Patent Application Publication 2003/0127638.

Regarding claim 1, a lockable protective cap 18 for a post 20 having a top end and an engageable surface, the cap comprising: a sidewall having a first end and an open second end (bottom), said sidewall forming a post receiving opening (lower hollow portion); a cover (top) at least partially closing said first end of said sidewall; a locking member 28 extending inwardly from said sidewall for engaging the engageable surface of the post.

Regarding claim 2, wherein said cover completely encloses said first end of said sidewall.

Regarding claim 3, wherein said cover provides a protective lip (corner indentation between the top and sidewall) at said first end of said sidewall for covering at least a portion of the top end of the post.

Regarding claim 4, wherein said locking member 28 extends inwardly from said sidewall at an angle from about 40 degrees to about 50 degrees.

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Regarding claim 5, wherein said locking member 28 is formed by a portion of said sidewall extending inwardly into said post-receiving opening.

Regarding claim 6, wherein said locking member 28 comprises a rib.

Regarding claim 7, wherein said rib 28 extends substantially around the perimeter of said post-receiving opening of said sidewall.

Regarding claim 9, wherein said locking member 28 is formed unitarily with said sidewall. (it is a unitary piece once assembled)

Regarding claim 10, wherein said locking member 28 comprises a surface for sliding over the engageable surface of the post.

Regarding claim 11, wherein at least one of said locking member 28 and said sidewall are deformable to slide over the engageable surface of the post. (inherent from the figures)

Regarding claim 12, wherein said locking member comprises a tab 28.

Regarding claim 13, wherein said locking member 28 comprises a distal surface displaced from said sidewall for engaging the engageable surface of the post.

Regarding claim 14, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post.

Regarding claim 15, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about two inches. (The size is not disclosed but it is inherent that it is about 2 inches) (A

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change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

Regarding claim 16, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post plus about the length of the engageable surface of the post.

Regarding claim 17, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about 2.75 inches. (The size is not disclosed but it is inherent that it is about 2.75 inches) (A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

Regarding claim 18, a lockable protective cap 18 for a post having a top end and an engageable surface, the cap comprising: a sidewall having a first end and an open second end (bottom), said sidewall forming a post receiving opening; a cover at least partially closing said first end of said sidewall; a locking member 28 extending inwardly from said sidewall for engaging the engageable surface of the post; and a means 32 for preventing said cap from rotating about the post.

Regarding claim 19, wherein said means 32 for preventing said cap from rotating about the post comprises at least one of a channel (center of 32), a slot (slot in bottom of 32), an opening in said sidewall, and a deformable sidewall.

Regarding claim 20, wherein said means 32 for preventing said cap from rotating about the post comprises said sidewall being formed to match the shape of at least a portion of the post.


Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Glidden, Jr. U.S. Patent 4,964,619 show a similar fence cap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (571) 272-7079. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571)272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John R. Cottingham
Primary Examiner
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